

**EDUCATION DEPARTMENT[281]**

**Adopted and Filed**

**Rule making related to open enrollment of special education students**

The State Board of Education hereby amends Chapter 17, “Open Enrollment,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate File 2082.

*Purpose and Summary*

These amendments modernize the language used in provisions on open enrollment of special education students, based on 2020 Iowa Acts, Senate File 2082. No substantive change is intended. These amendments also conform to the federal process for resolving disputes regarding placement of students with disabilities in school choice programs.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5463C**. A public hearing was held on March 16, 2021, at 9 a.m. in Room B100, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa. No one attended the public hearing. The Department received one written comment from the area education agency special education directors, who were in support of the rule making. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the State Board on May 6, 2021.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on July 7, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 17.6(3) as follows:

**17.6(3) Policy on insufficient classroom space.** No receiving district shall be required to accept an open enrollment request if it has insufficient classroom space to accommodate the pupil(s). Each district board shall adopt a policy which defines the term “insufficient classroom space” for that district. This policy shall establish a basis for the district to make determinations on the acceptance or denial, as a receiving district, of an open enrollment request. This policy may include, but shall not be limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, ~~law or rules governing~~ special education class size or caseload established pursuant to rule 281—41.408(256B,273,34CFR300), or board-adopted district educational goals and objectives. This policy shall be reviewed annually by the district board.

ITEM 2. Amend rule 281—17.11(282) as follows:

**281—17.11(282) Special education students.** If a parent/guardian requests open enrollment for a pupil requiring special education, as provided by Iowa Code chapter 256B and 281—Chapter 41, this request shall receive consideration under the following conditions.

**17.11(1) Appropriateness of program.** The request shall be granted only if the receiving district is able to provide within that district the appropriate special education program for that student in accordance with Iowa rules of special education, 281—Chapter 41. This determination shall be made by the receiving district in consultation with the resident district and the appropriate area education agency(ies) before approval of the application. In a situation where the appropriateness of the program is in question, the pupil shall remain enrolled in the program of the resident district until a final determination is made, unless all parties otherwise agree, as provided in 281—Chapter 41. ~~If the appropriateness of the special education program in the resident district is questioned by the parent, then the parent may request a due process hearing as provided by 281—41.507(256B,34CFR300) or a mediation conference as provided by 281—41.506(256B,34CFR300).~~ If the appropriateness of the special education program in the receiving district is at issue, the final determination of the appropriateness of a special education instructional program shall be the responsibility ~~of the director of special education of the area education agency in which the receiving district is located, based upon the decision~~ of the child’s individualized education program team, which shall include a representative from the resident district that has the authority to commit district resources, and which decision is subject to the parent’s procedural safeguards under 281—Chapter 41.

**17.11(2) Class size and caseload.** The provisions of subrule 17.6(3) apply to requests for open enrollment for a child with a disability. The following conditions apply:

*a.* The enrollment of the child in the receiving district’s program would not cause the size of the class or caseload in that special education instructional program in the receiving district to exceed the maximum class size or caseload set forth in subrule 17.6(3).

*b.* If the child would be assigned to a general education class, there is sufficient classroom space, as established in subrule 17.6(3), for the general education class to which the child would be assigned.

**17.11(3) Transportation.** District transportation requirements, parent/guardian responsibilities and, where applicable, financial assistance for an open enrollment special education pupil shall be as provided by ~~rule rules~~ 281—17.9(282) and 281—41.412(256B,34CFR300).

**17.11(4) Finance.** The district of residence shall pay to the receiving district on the schedule set forth in subrule 17.10(5) the actual costs incurred by the receiving district in providing the appropriate special education program. These costs shall be based on the current year expenditures with needed adjustments made in the final payment. The responsibility for ensuring that an appropriate program is maintained

for an open enrollment special education pupil shall rest with the resident district. The receiving district and the receiving area education agency director shall provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. The receiving district shall provide notice to the resident district of all staffings scheduled for each open enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are required to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil shall be forwarded to the receiving district's area education agency.

[Filed 5/6/21, effective 7/7/21]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/2/21.